IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No : 24222 of 2003

AND

CONTEMPT CASE No.438 of 2004

W.P.No.24222 of 2003**:**

Between:

SK.Babujohn, S/o. Ramthulla,
Andhra Pradesh State Housing Corporation Ltd., Singariahkonda,
Mandal & Village, Prakasham District.

..... PETITIONER

AND

1 A.P. State Housing Corporation Ltd., Rep. by the Managing Director of A.P.S.H.C. Ltd.,
Urdugally, Himayatnagar,
Hyderabad-500029.
2 The District Manager, A.P. State Housing Corporation Ltd., Prakasham District, Ongole.
3 The Deputy Executive Engineer, A.P. State Housing Corporation Ltd.,
Ongole (urban)/Kandukar, Prakasham District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records in respect of the petitioner's representations made in the year 1995, 1998, and June, 2003 to respondent 1 for regularization of the petitioner in the post of attender and issue a Writ of Mandamnus or any other appropriate writ or

order or direction in the nature of Mandamus directing respondent 1 to consider the petitioner's case for regularization in the post of attender and also to direct respondent to extend the benefit of minimum emoluments to the petitioner as was given to V.Veera Swamy

Counsel for the Petitioner: MS.T.BALA JAYASRI

Counsel for the Respondent Nos.1 to 3: MR.V.CH.NAIDU

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CONTEMPT CASE NO : 438 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 18.11.2003 in WPMP No.30491 of 2003 in WP No.24222 of 2003.

Between:

SK Babu John, S/o Ramthull,
A.P. State Housing Corporation Ltd., Singaraihkonda(M) & (V),
Prakasam Dist.

..... PETITIONER

AND

1 Sri D. Ramakrishna, Managing Director
APSHC Ltd., Urdugally
Himayatnagar, Hyderabad.
2 The Dist Manager
A.P.State Housing Corporation Ltd, Prakasam Dist.,
3 The Deputy Executive Engineer,
A.P. State Housing Corporation Limited,

Ongole(Urban)/Kandukur, Prakasam Dist.

.....RESPONDENT(S)

Counsel for the Petitioner: MS.T.BALA JAYASRI

Counsel for the Respondents: MR.V.CH.NAIDU (SC FOR AP HOUSING CORP.)

The Court made the following :

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COMMON ORDER:

The case of the petitioner is that he was initially engaged on 25.7.1990 as Casual Labour on daily wages to watch and guard the cement godown of the respondent-corporation at Singarayakonda. After passing X Class in the year 1987 in Z.P. School, Gudlur, Prakasam District, he was appointed as Attender by the respondent-corporation on N.M.R. basis on 25.7.1990 and posted in the office of the 2nd respondent-District Manager, Ongole. Thereafter, he was transferred to Singarayakonda as N.M.R. Attender vide Proceedings, dated 7.11.1998. Thus, he has been continuously working in the respondent-Corporation for the last 13 years in the capacity of an Attender. Presently, he is working in the respondents' Sub-office in Singarayakonda, Prakasam District. It is stated that he made a representation in the year 1995 to the 2nd respondent requesting for regularization of his services in the category of Attender as he has completed minimum five years of continuous service in pursuance of G.O.Ms.No.212 Finance & Planning Department, dated 22.4.1994. His representation was forwarded by the 2nd respondent vide his Proceedings dated 19.8.1995 to the 1st respondent recommending his case for regularization in the cadre of Attender as he had completed 5 years of service as per the said Government Order. As

the said representation was not considered, another representation, dated 1.4.1998 was made before the 2nd respondent for regularization of his service, which was duly forwarded by the 2nd respondent vide proceedings dated 15.7.1998 to the 1st respondent. Further, it is the case of the petitioner that one V.Veeraswamy, was appointed as N.M.R. Attender on 1.1.1993 by the 1st respondent in the respondent-Corporation and the 1st respondent, vide his Memo dated 2.9.2002, sanctioned minimum emoluments to the N.M.R Work Inspectors and others as per the scales of Pay Revision Commission, 1999 (for short "P.R.C. 1999") but, the same benefit was not extended to the petitioner. It is further stated that the petitioner is also entitled to minimum emoluments attached to the post held by him as per the scales of P.R.C., 1999 as his junior V.Veeraswamy, N.M.R. Attender was sanctioned minimum emoluments as per Memo, dated 2.9.2002. The 2nd respondent vide his Proceedings, dated 3.10.2002, extended the benefit of minimum emoluments as per the scales of P.R.C., 1999 to N.M.R. Work Inspectors and other N.M.R. employees and accordingly, his Junior V.Veeraswamy, N.M.R. Attender was paid minimum emoluments of Rs.3,078/- as against the present pay of Rs.1,375/-. V.Veeraswamy joined on 1.1.1993 whereas the petitioner joined on 25.7.1990. As the representation of the petitioner was not considered, he has filed this writ petition questioning the action of the respondents in not considering the case of the petitioner for regularization of his service as arbitrary and discriminatory.

It is also stated that there is a clear vacancy of the post of Attender in the office of the 3rd respondent-Deputy Executive Engineer for which the petitioner may be considered for appointment.

The 1st respondent has filed counter affidavit stating that the petitioner was appointed on 25.7.1990 as Casual Labour on daily wages and he has been continuing since 1990 onwards, but he is not entitled to regularization of services as he was working as

Godown Watchman, which is not a sanctioned post of the approved staffing pattern of A.P. State Housing Corporation Limited and therefore, the wages are being paid to the Godown Watchman from 3% administrative charges provided in the unit cost of house sanctioned for construction and there are no permanent godowns attached to the Corporation. As there is no sanctioned post, the petitioner is not entitled to regularization of his services as per G.O.Ms.No.212, dated 22.4.1994. Insofar as the case of V.Veeraswamy, Attender and others are concerned, it is stated that pursuant to the orders of this Court for regularization of services, the 1st respondent sanctioned orders for payment of minimum emoluments to V.Veeraswamy, N.M.R. Attender, M.Natraj and M.Nagaraju, N.M.R. Non-Technical Work Inspectors with effect from 1.9.1998 vide Memos, dated 9.9.1999 and 4.10.1999; and accordingly, the 2nd respondent issued proceedings, dated 2.11.1999 sanctioning the minimum emoluments to V.Veeraswamy, N.M.R., attender and two others with effect from 1.9.1998. It is further stated that as per G.O.Ms.No.24, PE III Dept., dated 19.5.2001 and as per the resolution of the 86th Board Meeting of the respondent-Corporation held on 30.6.2001, the 1st respondent, vide its memo dated 2.9.2002, permitted the 2nd respondent to extend the minimum emoluments attached to the posts held by them as per the scales of P.R.C., 1999 in a consolidated form based on the minimum emoluments attached to the posts held by them without any annual increment and Dearness Allowance with effect from 1.4.1999. It is also admitted that the 1st respondent directed the 2nd respondent vide Memo dated 27.6.2003 to submit a report along with supported documentary evidence of the petitioner on the representation filed by him whether the petitioner was initially appointed as Godown Watchman or Office Watchman. It is stated that the petitioner is presently working as N.M.R. Godown Watchman on daily wage to watch and guard the cement godown at Singarayakonda. It is further stated that no N.M.R. Watchman was regularized in the post of Attender except T.Venkataiah, Godown Watchman, who joined on

6.1.1984 and whose scales were extended from Rs.1,375/- to Rs.2,375/- and also M.Venkata Reddy Godown Watchman, whose services were regularized in the time scale of Rs.1375/- to Rs.2375/- as per the orders of this Court. Accordingly, it is submitted that there is no clear appointment of the petitioner in the existing vacancy. Therefore, the petitioner is not entitled to regularization of his services.

Insofar as the case of M.Venkata Reddy, Godown Watchman is concerned, this Court considered all such contentions of the 3rd respondent in W.P.No.16765 of 1996, dated 28.4.1997. A similar argument was advanced in the said case stating that such Godown Watchman is not entitled to regularization as per G.O.Ms.No.212, dated 22.4.1994 on the ground that there was no sanctioned post to the Godown Watchman nor is there any clear vacancy. The learned single Judge of this Court, following the earlier judgments of this Court in the case of **B.DHARMA RAO Vs. M.D., A.P. T.T.D.C. Ltd.** held that there is no requirement that the employee who is seeking regularisation under G.O.Ms.No.212, dated 22.4.1994 should have been appointed in a sanctioned post. The said Government Order merely stipulates that the absorption shall be against clear vacancies considered necessary to be continued as per the work load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee. The petitioner claims that there is a clear vacancy in which he can be regularly absorbed and his appointment was also ratified and he has been continuing for more than 13 years. Therefore, the respondents cannot discriminate the petitioner while regularizing the services of his junior V.Veersswamy, who was appointed on 1.11.1993.

The learned counsel appearing for the petitioner has placed reliance on a decision reported in the case of **SANDEEP KUMAR Vs. STATE OF U.P. AND OTHERS** wherein it was held that the Supreme Court, while noticing the fact that when a similarly situated persons were employed for the work which the petitioners are called upon to do on a regular basis, such petitioners are also entitled on par with the

regular employees. The same principle also applies to the instant case, with regard to the case of the petitioner's junior, whose services are regularized and minimum emoluments were sanctioned as per P.R.C, 1999.

Having regard to the facts and circumstances of the case, the writ petition is allowed directing the respondents to consider the case of the petitioner to the post of Attender by extending the benefits of minimum emoluments to him on par with V.Veeraswamy and pass appropriate orders, within four weeks from the date of the receipt of a copy of this order.

In view of the disposal of the writ petition, directing the respondents to consider the case of the petitioner as aforementioned, I am of the view that no further orders require to be passed in the Contempt Case and the C.C.No.438 of 2004 is accordingly closed with a liberty to the petitioner to file a fresh Contempt Case if the respondents failed to comply with the orders passed in the main writ petition. No order as to costs.

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(V.ESWARAIAH, J.)

29th September, 2004.

Note: Furnish copy within one week.

B/o.

Bcj

To

1 The Managing Director, A.P. State Housing Corporation Ltd.,
Urdugally, Himayatnagar,
Hyderabad-500029.
2 The District Manager, A.P. State Housing Corporation Ltd., Prakasham District, Ongole.
3 The Deputy Executive Engineer, A.P. State Housing Corporation Ltd.,
Ongole (urban)/Kandukar, Prakasham District.

4 Two C.D. copies